MALAYSIAN REPORTS

JOHARI BIN KHALID & ANOR. v. MOHAMED ZAMRI BIN KHALID & ANOR. (No. 2)

[F.C. (Seah, Mohamed Azmi & Syed Agil Barakbah F.JJ.) July 11, 1984]

[Kuala Lumpur — Federal Court Civil Appeal No. 276 of 1983]

Practice and Procedure – Application for leave to appeal to Yang di-Pertuan Agong – Questions of fact – Leave refused.

In this case the respondents applied for conditional leave to appeal to the Yang di-Pertuan Agong. In the High Court, quantum of damages was agreed but liability for the accident was disputed by the appellants. At the conclusion of the trial the learned judge gave judgment in favour of the respondents. On appeal to the Federal Court the finding of the trial judge was reversed and the appeal was allowed ([1985] 1 M.L.J. 142).

Held: the intended appeal involved substantially factual grounds and leave to appeal should be refused on the facts of the case.

FEDERAL COURT.

M. Mahalingam (Senior Federal Counsel) for the appellants.

David Tay (C. Foo with him) for the respondents.

Seah F.J. (delivering the Judgment of the Court): This was an application by the respondents under section 74(1)(a)(i) and (ii) of the Courts of Judicature Act 1964 (as amended) for conditional leave to appeal to the Yang di-Pertuan Agong.

In the High Court, quantum of damages was agreed but liability for the accident was disputed by the appellants. At the conclusion of the trial the learned judge gave judgment in favour of the respondent. On appeal to the Federal Court the finding of the learned trial judge was reversed and the appeal was allowed.

We have perused the judgments of the High Court and the Federal Court and in our opinion, the intended appeal involved substantially factual grounds and in the exercise of our discretion, leave to appeal ought to be refused on the facts of this case.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

PEMUNGUT HASIL TANAH, KUANTAN v. SIM HOE WOOD & SAWMILLS SDN. BHD. & FIVE OTHER CASES

[F.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah F.JJ.) March 20 & August 15, 1984]

[Kuala Lumpur — Federal Court Civil Appeal Nos. 58, 59, 60, 61, 62 and 75 of 1983]

Land Law – Land acquisition – Previous sale of lots – Principles applicable – Method of approach – Land Acquisition Act, 1960, ss. 4 & 8.

These cases involved four lots of land which were, *inter alia,* acquired by the Government of Pahang for the Gebeng Industrial area. The four acquired lots were 1954, 1955, 402 and 764 respectively. Lot 402 had three co-owners and the rest one each but all the six references were heard together. The learned judge made the following decisions:–

(1) *Lot 1954* in Civil Appeal No. 75/83, confirmed the Collector's award of $12,000/- per acre.

(2) *Lot 1955* in Civil Appeal No. 61/83, increased the Collector's award from $12,000/- to $19,250/- per acre.

(3) *Lot 402* in Civil Appeals Nos. 59, 60 and 62/83, increased the Collector's award from $11,400/- to $14,062/- per acre.

(4) *Lot 764* in Civil Appeal No. 58/83, increased the Collector's award from $10,000/- to $14,844/- per acre.

The landowner of Lot 1954 appealed against the decision of the learned Judge while the Collector being dissatisfied with the Judge's decision appealed against the increase in the awards for the other three lots.

The owners of the scheduled lands and their counsel were absent at the inquiry before the Collector and it was submitted that they had therefore no right to compensation exceeding the sums awarded by the Collector. However the point was not brought to the attention of the learned Judge at the commencement of the proceedings as a preliminary issue nor has this point been included as a ground of appeal nor made an issue in the written submissions.

It was agreed between the parties in the court below that lots 1954 and 1955 were to be treated as basis in determining the values of the other lots. In relation to lot 502 a 5% deduction would be made to the value of lots 1954 and 1955 and in relation to lot 764 a 10% deduction would likewise be made to the value of the said lots. Lot 1954 had been sold two years prior to the material date at $8000/- per acre and lot 1955 was sold about three years prior at $11,000/- per acre. The learned Judge treated the lots separately and he made due allowance for all the circumstances by allowing the average increase of the price per annum based on the valuation reports.

Held: (1) the preliminary objection relating to the absence of the owners and their counsel at the hearing